

HOUSE BILL 1675
By Davidson

AN ACT to amend Tennessee Code Annotated, Title 43, relative to
the Tennessee Processing Cooperative Law.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, is amended by adding the
following as a new chapter 38.

43-38-101.

This act may be cited as the "Tennessee Processing Cooperative Law."

43-38-102.

(a) As used in this act:

(1) "Address" means mailing address, including a zip code. In the
case of a registered address, the term means the mailing address and the
actual office location, which may not be a post office box;

(2) "Articles" means the articles of organization of a cooperative as
originally filed and subsequently amended;

(3) "Association" means an organization conducting business on a
cooperative plan under the laws of this state or another state that is

chartered to conduct business under other laws of this state or another state;

(4) "Board" means the board of directors of a cooperative;

(5) "Business entity" means a company, limited liability company, limited liability partnership or other legal entity, whether domestic or foreign, association or body vested with the power or function of a legal entity;

(6) "Cooperative" means an association organized under this chapter conducting business on a cooperative plan as provided under this chapter;

(7) "Domestic business entity" means a business entity organized under the laws of this state;

(8) "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word "Filed" or a similar word determined by the secretary of state and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person or entity who delivered it for filing;

(9) "Foreign business entity" means a business entity that is not a domestic business entity;

(10) "Member" means a person or entity reflected on the books of the cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members;

(11) "Membership interest" means a member's interest in a cooperative consisting of a member's financial rights, a member's right to assign financial rights, a member's governance rights and a member's right to assign governance rights. Membership interest includes patron membership interests and nonpatron membership interests;

(12) "Members' meeting" means a regular or special members' meeting;

(13) "Nonpatron membership interest" means a membership interest that does not require the holder to conduct patronage business for or with the cooperative to receive financial rights or distributions;

(14) "Patron" means a person or entity that conducts patronage business with the cooperative;

(15) "Patronage" means business, transactions, or services done for or with the cooperative as defined by the cooperative;

(16) "Patron member" means a member holding a patron membership interest;

(17) "Patron membership interest" means the membership interest requiring the holder to conduct patronage business for or with the cooperative, as specified by the cooperative to receive financial rights or distributions; and

(18) "Signed" means that the signature of a person has been written on a document, and, with respect to a document required by this article to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this article, the articles or bylaws, or by a resolution approved by the directors or the members. A signature on a document may be a facsimile affixed, engraved, printed,

placed, stamped with indelible ink, transmitted by facsimile or electronically or in any other manner reproduced on the document.

43-38-103.

The secretary of state shall promulgate rules and regulations necessary to implement the provisions of this article.

43-38-104.

(a) Each cooperative shall have and continuously maintain in this state:

(1) A registered office that may be, but need not be, the same as its place of business;

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with the registered office, or a domestic business entity, or a foreign business entity authorized to transact business in this state, having a business office identical with the registered office.

(b) A cooperative may change its registered office or agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(1) The name of the cooperative;

(2) The address of its then registered office;

(3) If the address of its registered office is to be changed, the address to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent is to be changed, the name of its successor registered agent;

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) That the change was authorized by affirmative vote of a majority of the board of directors of the cooperative.

(c) The statement shall be signed and delivered to the secretary of state. If the secretary of state finds that the statement conforms to the provisions of this act, the secretary shall file the statement in his office, and upon filing the change of address of the registered office or the appointment of a new registered agent or both, as the case may be is effective.

(d) Any registered agent of a cooperative may resign as agent upon filing a written notice resignation, signed with one (1) original and one (1) exact or conformed copy, with the secretary of state, who shall mail a copy to the cooperative at its principal mailing address as defined and prescribed by the secretary of state. The appointment of the agent shall terminate upon the expiration of thirty (30) days after receipt of notice by the secretary of state.

(e) If any cooperative has failed for thirty (30) days to appoint and maintain a registered agent in this state, or has failed for thirty (30) days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the following manner. The secretary of state shall mail by certified mail a notice of its failure to comply with the provisions. Unless compliance is made within thirty (30) days of the delivery of notice, the cooperative shall be deemed defunct and to have forfeited its certificate of organization acquired under the laws of this state. Provided, that any defunct cooperative may at any time within two (2) years after the forfeiture of its certificate, in the manner provided in this section, be revived and reinstated, by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of

state by rule, together with a penalty of one hundred dollars (\$100). The reinstatement fee shall not exceed the costs of providing the reinstatement service. The cooperative shall retain its registered name during the two (2) year reinstatement period under this section.

43-38-105. A cooperative may be formed and organized on a cooperative plan as provided under this article to market, process, or otherwise change the form or marketability of crops, livestock and other agricultural products, including manufacturing and further processing of those products and other purposes that are necessary or convenient to facilitate the production or marketing of agricultural products by patron members and other purposes that are related to the business of the cooperative; to provide supplies and services to its members; and for purposes that cooperatives are authorized by law.

43-38-106. A cooperative may be organized by one (1) or more organizers who shall be adult natural persons, who may act for themselves as individuals or as the agents of other entities. The organizers forming the cooperative need not be members of the cooperative.

43-38-107.

(a) The name of a cooperative shall distinguish the cooperative upon the records in the office of the secretary of state from the name of a domestic business entity or a foreign business entity, authorized or registered to do business in this state or a name the right to which is, at the time of organization, reserved or provided for by law.

(b) The cooperative name shall be reserved for the cooperative during its existence.

43-38-108.

(a) The organizers shall prepare the articles, which shall include:

- (1) The name of the cooperative;
- (2) The purpose of the cooperative;

(3) The principal place of business for the cooperative and the name and address of its registered agent in this state;

(4) The period of duration for the cooperative, if the duration is not to be perpetual;

(5) The capital structure of the cooperative including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue member interests, which may be designated to be determined by the board;

(6) A provision designating the voting and governance rights, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this article;

(7) A statement that patron membership interests with voting power shall be restricted to one (1) vote for each member regardless of the amount of patron membership interests held in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in this chapter;

(8) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws;

(9) The names, post office addresses, and terms of office of the directors of the first board;

(10) A statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interests collectively, a statement that net income allocated to a patron membership interests as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of

patronage, and that the records of the cooperative shall include the interests of patron membership interests and nonpatron membership interests which may be further described in the bylaws, of any classes, and in the reserves; and

(11) The registered address of the cooperative.

(b) The articles shall contain the provisions in subsection (a) of this section, except that the names, post office addresses of the directors of the first board may be omitted after their successors have been elected by the members or the articles are amended or restated in their entirety.

(c) The articles may contain any other lawful provision.

(d) The articles shall be signed by the organizers.

(e) The original articles shall be filed with the secretary of state.

(f) When the articles of organization have been filed with the secretary of state and the required fee has been paid to the secretary of state, it shall be presumed that:

(1) All conditions precedent that are required to be performed by the organizers have been complied with;

(2) The organization of the cooperative has been chartered by the state as a separate legal entity; and

(3) The secretary of state shall issue a certificate of organization to the cooperative.

43-38-109.

(a) The articles of a cooperative shall be amended as follows:

(1) The board by majority vote shall pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached mail ballot, if the board has provided for a mail ballot in the resolution or alternative method approved by the board and stated in the resolution, shall be mailed or distributed with a regular or special meeting notice to each member.

The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on;

(2) If a quorum of the members is registered as being present or represented by alternative vote at the meeting, the proposed amendment is adopted:

(A) If approved by a majority of the votes cast; or

(B) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) After an amendment has been adopted by the members, the amendment shall be signed by the chair, vice-chair, records officer, or assistant records officer and a copy of the amendment filed in the office of the secretary of state.

(c) A certificate shall be prepared stating:

(1) The vote and meeting of the board adopting a resolution of the proposed amendment;

(2) The notice given to members of the meeting at which the amendment was adopted;

(3) The quorum registered at the meeting; and

(4) The vote cast adopting the amendment.

(d) The certificate shall be signed by the chair, vice-chair, records officer or financial officer and filed with the records of the cooperative.

(e) A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

43-38-110.

(a) A business entity organized and doing business under other statutes of this state or under the laws of other states that has or will conduct business as a cooperative may become subject to this chapter by amending its organizational documents to conform to the requirements of articles of organization under this chapter.

(b) A business entity organized under other statutes of this state may amend its articles in the manner provided under the statute that it is governed by for the adoption of amendments to comply with the provisions of this chapter and file the amended articles with the secretary of state to be a cooperative governed under this chapter. The status of the business entity under the other statutes terminates with the filing of articles to be governed under this chapter.

(c) A business entity organized under laws of other states shall amend its organizational documents in the manner required by the laws of the state where it was organized to comply with the provisions of this chapter. After the organizational documents are amended, the business entity shall file a certified copy of the organizational documents as amended with the secretary of state to comply with the provisions of this chapter with the fees and requirements prescribed for filing articles. After filing, the business entity is a cooperative in this state organized under and subject to the provisions of this chapter.

43-38-111.

(a) The existence of a cooperative shall begin when the articles are filed with the secretary of state.

(b) A cooperative shall have a perpetual duration unless the cooperative provides for a limited period of duration in the articles of organization.

43-38-112.

(a) A cooperative shall have bylaws governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations and distributions of membership interests.

(b) The bylaws of a cooperative may be adopted or amended by the directors as provided in subsection (c) of this section, or at a regular or special members' meeting if:

(1) The notice of the regular or special meeting contains a statement that the bylaws or restated bylaws will be voted upon and copies are included with the notice, or copies are available upon request from the cooperative and summary statement of the proposed bylaws or amendment is included with the notice;

(2) A quorum is registered as being present or represented by mail or alternative voting method if the mail or alternative voting method is authorized by the board; and

(3) The bylaws or amendment is approved by a majority vote cast, or for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(c) Until the next annual or special members' meeting, the majority of directors may adopt and amend bylaws for the cooperative that are consistent with subsection (d) of this section which may be further amended or repealed by the members at an annual or special members' meeting.

(d) Bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with law or the articles, and shall include the following:

- (1) The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
- (2) The qualifications of members and any limitations on their number;
- (3) The manner of admission, withdrawal, suspensions, and expulsion of members;
- (4) Generally the governance rights, financial rights, assignability of governance and financial rights, and other rights, privileges and obligations of members and their membership interests, which may be further described in member control agreements.

43-38-113.

(a) In addition to other powers, a cooperative as an agent or otherwise:

- (1) May perform every act and thing necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative;
- (2) Has other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this chapter; and
- (3) Has the powers given in this section.

(b) A cooperative may buy, sell, or deal in its own products, the products of the cooperative's individual members, patrons or nonmembers, the products of another cooperative association, or of its members or patrons, or the products of another person or entity. A cooperative may negotiate the price at which the products the cooperative is selling may be sold.

(c) A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members.

(d) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange and convey as a legal entity real estate, buildings and personal property as the business of the cooperative may require including the sale or other disposition of assets required by the business of the cooperative as determined by the board.

(e) A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

(f) A cooperative may issue bonds or other evidence of indebtedness and may borrow money to finance the business of the cooperative.

(g) A cooperative may make advances to the cooperative's members or patrons on products delivered by the members or patrons to the cooperative.

(h) A cooperative may accept deposits of money from other cooperatives, associations or members from which it is constituted.

(j) A cooperative may loan or borrow money to or from individual members, cooperatives or associations from which it is constituted with security that it considers sufficient in dealing with the members, cooperatives, or associations.

(k) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity whether organized under the laws of this state or another state and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership interests.

(m) A cooperative may acquire and hold ownership interests in another business entity organized under the laws of this state or another state of the United States, including a business entity organized:

(1) As a federation of associations;

(2) For the purpose of forming a district, state, or national marketing, sales or service agency; or

(3) For the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

(n) A cooperative may purchase, own, and hold ownership interests, including stock and other equity interests, memberships, interests in nonstock capital, evidences of indebtedness of any domestic business entity or foreign business entity when reasonably necessary or incidental to accomplish the purposes stated in the articles.

(o) A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations or business entities from which it is constituted.

(p) A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative in its articles and may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal property.

43-38-114.

(a) A cooperative and its patron member or patron may make and execute a marketing contract, requiring the patron member or patron to sell a specified portion of the patron member's or patron's agricultural product or specified commodity produced from a certain area exclusively to or through the cooperative or facility established by the cooperative.

(b) If a sale is contracted to the cooperative, the sale shall transfer title to the product absolutely, except for a recorded lien or security interest, to the cooperative on delivery of the product or at another specified time if expressly provided in the contract. The contract may allow the cooperative to sell or resell the product of its patron member or patron with or without taking title to the product, and pay the resale price to the patron member or patron, after deducting all necessary selling, overhead and other costs and expenses, including other proper reserves and interest.

(c) A single term of a marketing contract shall not exceed ten (10) years, but a marketing contract may be made self-renewing for periods not exceeding five (5) years each, subject to the right of either party to terminate by giving written notice of the termination during a period of the current term as specified in the contract.

(d) The bylaws or the marketing contract, or both, may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the marketing contract regarding the sale or delivery or withholding of a product and may provide that the member or patron shall pay the costs, premiums for bonds, expenses and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in the courts of this state. The provisions shall be enforced as liquidated damages and are not to be considered or regarded as a penalty.

(e) If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a certified complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

(f) Any person who knowingly induces or attempts to induce any member or patrons of a cooperative organized under this chapter to breach his marketing contract with the cooperative, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), for each such offense; provided, that this section shall not apply to a bona fide creditor of such cooperative, or the agent or attorney of any such bona fide creditor, endeavoring to make collections of the indebtedness.

(g) In addition to the penalty provided in subsection (f) of this section, the person, corporation or other entity may be liable to the cooperative for civil damages for any violation of the provisions of subsection (f) of this section. Each violation shall constitute a separate offense and is subject to the penalties in this subsection and subsection (f) of this section.

43-38-115. A cooperative shall be governed by its board which shall take all action for and on behalf of the cooperative except those actions reserved or granted to members.

43-38-116. The board shall have not less than three (3) directors.

43-38-117.

(a) Directors shall be elected for the term, at the time, and in the manner provided in this section and the bylaws. A majority of the directors shall be members and at least one (1) director shall be elected exclusively by the members holding patron membership interests. The voting authority of the directors may be allocated according to allocation units or equity classifications of the cooperative provided that at least one-half (1/2) of the voting power on general matters of the cooperative shall be allocated to one (1) or more directors elected by members holding patron membership interests or in the alternative the one (1) or more directors elected by the members holding patron membership interests shall have an equal or shall not have a minority voting power on general matters of the cooperative.

(b) Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings, all directors shall be elected at the regular members' meeting.

(c) For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the

entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district, at the district meeting or the annual regular members' meeting.

(d) The following shall apply to alternative voting:

(1) A member may not vote other than by their presence at a meeting for a director or by mail ballot authorized by the board of directors, unless alternative voting is authorized for election of directors by the articles or bylaws;

(2) The ballot shall be in a form prescribed by the board;

(3) The member shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name, or shall vote in the alternative manner prescribed by the board; and

(4) If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting, the ballot shall be accepted and counted as the vote of the absent member.

(e) If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one (1) or more natural persons to be eligible for election as a director to the board.

43-38-118. If a patron member director's position becomes vacant for a director that was elected by patron members, the board shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting, provided, however, if there is only one patron member director a special members meeting shall be called to fill the patron member director vacancy. If the vacating director was not a patron member, the board shall appoint a patron member or a patron member's representative to fill the vacant position. At the next regular or special members' meeting, the members or patron members shall elect a director to fill the unexpired term of the vacant director's position.

43-38-119. The members electing a director may remove the director at a members' meeting for cause related to the duties of the position of director and fill the vacancy caused by the removal.

43-38-120.

(a) A director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles except as provided in subsection (b) of this section.

(b) The articles may not eliminate or limit the liability of a director:

(1) For a breach of the director's duty of loyalty to the cooperative or its members;

(2) For acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law;

(3) For a transaction from which the director derived an improper personal benefit; or

(4) For an act or omission occurring before the date when the provision in the articles eliminating or limiting liability becomes effective.

43-38-121.

(a) The board shall elect:

(1) A chair; and

(2) One (1) or more vice chairs.

(b) The board shall elect or appoint:

(1) A records officer; and

(2) A financial officer.

(c) The board may elect additional officers as the articles or bylaws authorize or require.

(d) The offices of records officer and financial officer may be combined.

(e) The chair and first vice chair shall be directors and members. The financial officer, records officer, and additional officers need not be directors or members.

(f) The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative.

(g) Other than the chief executive officer, members may remove an officer at a members' meeting for cause related to the duties of the position of the officer and fill the vacancy caused by the removal.

43-38-122.

(a) The authorized amount and divisions of patron membership interests and nonpatron membership interests may be increased or decreased or established or altered, in accordance with the restrictions in this article by amending the articles at a regular members' meeting or at a special members' meeting called for the purpose of the amendment.

(b) Authorized membership interests may be issued on terms and conditions prescribed in the articles, bylaws, or if authorized in the articles or bylaws as determined by the board. The cooperative shall disclose to any person or entity acquiring membership interests to be issued by the cooperative, the organization, capital structure and known business prospects and risks of the cooperative, the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative shall notify all members of the membership interests being offered by the cooperative. A membership interest may not be issued until the subscription price of the membership interest has been paid for in cash or a cash equivalent or property with the value of the property to be contributed approved by the board.

(c) The patron membership interests collectively shall have not less than fifteen percent (15%) of the cooperative's financial rights to profit allocations and distributions.

(d) After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred with the approval of the board.

(e) The cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed in the articles, bylaws or by separate disclosure to the members. Each member acquiring nonpatron membership interests shall sign a member control agreement or agree to the conditions of the bylaws, either of which shall describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocations of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles and bylaws, subject to the provisions of this chapter. If not otherwise provided, distributions shall be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests to the extent the contributions have been accepted by the cooperative.

(f) The bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of membership interests offered for sale. The first privilege to purchase

membership interests may be satisfied by notice to other members that the membership interests are for sale and a procedure by which members may proceed to attempt to purchase and acquire the membership interests. A membership interest acquired by the cooperative may be held to be reissued or may be retired and cancelled.

(g) Subject to the provisions in the bylaws, a member may dissent from and obtain payment for the fair value of the member's nonpatron membership interests in the cooperative if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences of the nonpatron membership interests of the dissenting member. The dissenting member shall file a notice of intent to demand fair value of the membership interest with the records officer of the cooperative within thirty (30) days after the amendment of the bylaws and notice of the amendment to members, otherwise the right of the dissenting member to demand payment of fair value for the membership interest is deemed to be waived. If a proposed amendment of the articles or bylaws shall be approved by the members, a member who is entitled to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of the membership interest with the records officer of the cooperative before the vote on the proposed action and shall not vote in favor of the proposed action, otherwise the right to demand fair value for the membership interest by the dissenting member is deemed waived. After receipt of the dissenting member's demand notice and approval of the amendment, the cooperative has sixty (60) days to rescind the amendment or otherwise the cooperative shall remit the fair value for the one (1) member's interest to the dissenting member by one hundred eighty (180) days after receipt of the notice. Upon receipt of the fair value for the membership interest, the member has no further member rights in the cooperative.

43-38-123.

(a) A cooperative may group members and patron members in districts, units or another basis if and as authorized in its articles and bylaws which may include authorization for the board to determine the groupings.

(b) The board may do things necessary to implement the use of districts or units including setting the time and place and prescribing the rules of conduct for holding meetings by districts or units to elect delegates to members' meetings.

43-38-124.

(a) A member who knowingly, intentionally, or repeatedly violates a provision of the articles, bylaws, member control agreement or marketing contract with the cooperative, may be required by the board to surrender the financial rights of membership interest of any class owned by the member.

(b) The cooperative shall refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of the financial right of the membership interest payable in not more than seven (7) years from the date of surrender or the board may transfer all of any patron member's financial rights to a class of financial rights held by members who are not patron members, or to a certificate of interest which carries liquidation rights on par with membership interests and is redeemed within seven (7) years after the transfer as provided in the certificate.

(c) Membership interests required to be surrendered may be reissued or be retired and cancelled by the board.

(d) A member who knowingly, intentionally or repeatedly violates a provision of the articles, bylaws, member control agreement, or a marketing contract, may be required by the board to surrender voting power in the cooperative.

43-38-125. A member is not, merely on the account of that status, personally liable for the acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid

subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative.

43-38-126.

(a) Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

(b) The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board.

(c) The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

(d) All directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

(e) The cooperative shall give notice of regular members' meetings by mailing the regular members' meeting notice to each member at the member's last known post office address or by other notification approved by the board and agreed to by the members. The regular members' meeting notice shall be published or otherwise given by approved method at least two (2) weeks before the date of the meeting or mailed at least fifteen (15) days before the date of the meeting.

43-38-127.

(a) Special members' meetings of the members may be called by:

(1) A majority vote of the board; or

(2) The written petition of at least twenty percent (20%) of the patron members, twenty percent (20%) of the nonpatron members or twenty percent (20%) of all members collectively are submitted to the chair.

(b) The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address or an alternative method approved by the board and the member individually or the members generally. For a member that is an entity, notice mailed or delivered by an alternative method shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten (10) days from and after the date of the presentation of a members' petition, and the special members' meeting shall be held within thirty (30) days after the date of the presentation of the members' petition.

43-38-128.

(a) After mailing special or regular members' meeting notices or otherwise delivering the notices, the cooperative shall execute a certificate containing the date of mailing or delivery of the notice and a statement that the special or regular members' meeting notices were mailed or delivered as prescribed by law.

(b) The certificate shall be made a part of the record of the meeting.

43-38-129. Failure of a member to receive a special or regular members' meeting notice does not invalidate an action that is taken by the members at a members' meeting.

43-38-130.

(a) The quorum for a members' meeting to transact business shall be:

(1) Ten percent (10%) of the total number of members for a cooperative with five hundred (500) or less members; or

(2) Fifty (50) members for cooperatives with more than five hundred (500) members.

(b) In determining a quorum at a meeting, on a question submitted to a vote by mail or an alternative method, members present in person or represented by mail vote or

the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chair or the records officer of the cooperative and shall be reported in the minutes of the meeting.

(c) An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

43-38-131.

(a) The members shall take action by the affirmative vote of the owners of the greater of:

(1) A majority of the voting power of the membership interests present and entitled to vote on that item of business; or

(2) A majority of the voting power that would constitute a quorum for the transaction of business at the meeting, except where this chapter, the articles of organization, or a member control agreement, require a larger proportion. If the articles, bylaws, or a member control agreement require a larger proportion than is required by this chapter for a particular action, the articles, bylaws, or the member control agreement control.

(b) In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, bylaws, a member control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series; or of the total outstanding membership interests of that class or series, as the proportion required pursuant to paragraph (a), unless the articles, bylaws, or the member control agreement require a larger proportion. Unless otherwise stated in the articles, bylaws, or a member control

agreement, in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 43-38-130.

43-38-132.

(a) A patron member of a cooperative is only entitled to one (1) vote on an issue to be voted upon by members holding patron membership interests, except that a patron member of a cooperative described in 43-38-133 may be entitled to more than one (1) vote as provided in that section. On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue. A nonpatron member has the voting rights in accordance to his nonpatron membership interests as granted in the bylaws, subject to the provisions of this chapter.

(b) A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

(c) A member's vote at a members' meeting shall be in person or by mail if a mail vote is authorized by the board or by alternative method if authorized by the board, and not by proxy except as provided in subsection (d) of this section.

(d) The following shall apply to members represented by delegates:

(1) A cooperative may provide in the articles or bylaws that units or districts of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit or district. The delegates may vote on matters at the members' meeting in the same manner as a member. The

delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws;

(2) If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate;

(3) Patron members may be represented by the proxy of other patron members; and

(4) Nonpatron members may be represented by proxy if authorized in the bylaws.

(e) The following shall apply to absentee ballots:

(1) A member who is or will be absent from a members' meeting may vote by mail or by an approved alternative method on the ballot prescribed in this subsection on any motion, resolution or amendment that the board submits for vote by mail or alternative method to the members;

(2) The ballot shall be in the form prescribed by the board and contain:

(A) The exact text of the proposed motion, resolution or amendment to be acted on at the meeting; and

(B) The text of the motion, resolution or amendment for which the member may indicate an affirmative or negative vote.

(3) The member shall express a choice by marking an appropriate choice on the ballot and mail, deliver or otherwise submit the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name or by an alternative method approved by the board; and

(4) A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

43-38-133.

(a) A cooperative that is constituted entirely or partially of other cooperatives or associations may authorize by the articles or the bylaws for affiliated cooperative patron members to have an additional vote for:

(1) A stipulated amount of business transacted between the patron member cooperative and the central cooperative organization;

(2) A stipulated number of patron members in the member cooperative;

(3) A certain stipulated amount of equity allocated to or held by the patron member cooperative in the cooperative central organization; or

(4) A combination of methods in subdivisions (1) through (3) of this subsection.

(b) A cooperative that is organized into units or districts of patron members, may, by the articles or the bylaws, authorize the delegates elected by its patron members or, have an additional vote for:

(1) A stipulated amount of business transacted between the patron members in the units or districts and the cooperative;

(2) A certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative; or

(3) A combination of methods in subdivisions (1) and (2) of this subsection.

43-38-134.

(a) A cooperative may, by affirmative vote of a majority of the board present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of directors considers expedient, and without member approval:

(1) Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) Transfer any or all of its property to a business entity all the ownership interests of which are owned by the cooperative.

(b) A cooperative, by affirmative vote of a majority of the board of directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of directors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the cooperative.

(c) Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current chair of the board of directors or authorized agents.

(d) The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by the statutes of this state.

43-38-135. A cooperative that holds ownership interests of another business entity may, by direction of the cooperative's board, elect or appoint a person to represent the cooperative at

a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative's vote at the business entity's meeting.

43-38-136.

(a) The bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than fifteen percent (15%) of the total profits in any fiscal year.

(b) The bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative by the patron membership interests collectively and other membership interests. The distributions to patron membership interests collectively shall not be less than fifteen percent (15%) of the total distributions in any fiscal year.

43-38-137.

(a) A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

(b) In addition to a capital reserve, the board may, for patron membership interests:

(1) Set aside an amount not to exceed five percent (5%) of the annual net income of the cooperative for promoting and encouraging cooperative organization; and

(2) Establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(c) Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may establish allocation units, whether the units are functional, divisional, departmental, geographic, or otherwise and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements.

(d) Distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

(e) A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

(f) The cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

(g) If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate of interest, the patron may participate in the distribution of income on the same basis as a patron member.

43-38-138.

(a) A written agreement among persons who are then members, including a sole member, or who have signed subscription or contribution agreements, relating to the control of any phase of the business and affairs of the cooperative, its liquidation, dissolution and termination, or the relations among members or persons who have signed subscription or contribution agreements is valid as provided in paragraph (b).

Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles of organization or bylaws, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section.

(b) Other than patron member voting control under Section 43-38-132 and patron member allocation and distribution provisions under Section 43-38-136 and 43-38-137, a written agreement among persons described in subsection (a) that relates to the control of or the liquidation, dissolution and termination of the cooperative, the relations among them, or any phase of the business and affairs of the cooperative, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of directors, the employment of members by the cooperative, or the arbitration of disputes, is valid, if the agreement is signed by all persons who are then the members of the cooperative, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power.

(c) This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the cooperative with respect to any of the matters described.

43-38-139.

(a) A cooperative may, in lieu of paying or delivering to the state the unclaimed property specified in its report of unclaimed property, distribute the unclaimed property to a corporation or organization that is exempt from taxation. A cooperative making the election to distribute unclaimed property shall file with the secretary of state:

(1) A verified written explanation of the proof of claim of an owner establishing a right to receive the abandoned property;

(2) Any error in the presumption of abandonment;

(3) The name, address, and exemption number of the corporation or organization to which the property was or is to be distributed; and

(4) The approximate date of distribution.

(b) This subsection does not alter the procedure provided by law for cooperatives to report unclaimed property to the state and the requirement that claims of owners are made to the cooperatives for a period following the publication of lists of abandoned property.

(c) The right of an owner to unclaimed property held by a cooperative is extinguished when the property is disbursed by the cooperative to a tax exempt organization in accordance with this section.

43-38-140.

(a) Unless otherwise prohibited, cooperatives organized under the laws of this state may merge or consolidate with each other or other business entities organized under the laws of this state or another state by complying with the provisions of this section or the law of the state where the surviving or new business entity will exist.

(b) To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state:

- (1) The names of the constituent cooperatives and other business entities;
- (2) The name of the surviving or new cooperative or other business entity;
- (3) The manner and basis of converting membership or ownership interests of the constituent cooperatives or business entities into membership or ownership interests in the surviving or new cooperative or business entity;
- (4) The terms of the merger or consolidation;
- (5) The proposed effect of the consolidation or merger on the members and patron members of the cooperative; and
- (6) For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized.

(c) The following shall apply to notice:

(1) The board shall mail a merger or consolidation or otherwise transmit or deliver notice to each member. The notice shall contain:

- (A) The full text of the plan; and
- (B) The time and place of the meeting at which the plan will be considered.

(2) A cooperative with more than two hundred (200) members may provide the merger or consolidation notice in the same manner as a regular members' meeting notice.

(d) The following shall apply to the adoption of a plan or merger or consolidation:

- (1) A plan of merger or consolidation is adopted if:
 - (A) A quorum of the members is registered as being present or represented by mail vote at the meeting; and

(B) The plan is approved by two-thirds (2/3) of the votes cast, or for a cooperative with articles or bylaws requiring more than two-thirds (2/3) of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(2) After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this article shall be signed by the chair, vice chair, records officer or documents officer of each cooperative merging or consolidating;

(3) The articles of merger or consolidation shall be filed in the office of the secretary of state;

(4) For a merger, the articles of the surviving cooperative subject to this article are deemed amended to the extent provided in the articles of merger;

(5) Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary of state;

(6) The secretary of state shall issue a certificate of organization of the merged or consolidated cooperative.

(e) The following shall apply to the effect of a merger:

(1) After the effective date, the cooperatives or other business entities that are parties to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new cooperative or other business entity is the business entity provided for in the plan. Except for the surviving or new business entity, the separate existence

of all business entities that are parties to the plan cease on the effective date of the merger or consolidation;

(2) The surviving or new business entity possesses all of the rights and property of each of the merged or consolidated business entities and is responsible for all their obligations. The title to property of the merged or consolidated business entity is vested in the surviving or new business entity without reversion or impairment of the title caused by the merger or consolidation; and

(3) The right of a creditor may not be impaired by the merger or consolidation without the creditor's consent.

43-38-141.

(a) A cooperative shall be as provided in the articles in a manner consistent with other business entities organized in this state or if not provided, may be dissolved in the same manner as a limited liability company organized in this state or the members may authorize a liquidation by adopting a resolution at a members' meeting. The liquidation may occur with or without a vote of dissolution. The notice of the members' meeting shall include a statement that the disposition of all or substantially all of the assets of the cooperative will be considered at the meeting. If a quorum is present in person, by mail ballot, or alternative method approved by the board at the members' meeting, the resolution approving of the dissolution is adopted if:

(1) Approved by two-thirds (2/3) of the votes cast; or

(2) For a cooperative with articles or bylaws requiring more than two-thirds (2/3) for approval and other conditions for approval, the resolution is approved by the proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) The board of directors by resolution may liquidate a cooperative if the board obtains an opinion of a certified public accountant that the cooperative is unlikely to continue as a business based on its current finances.

43-38-142. A cooperative may be dissolved by the members or by order of the court.

43-38-143

(a) After the notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

(1) To collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for shares; and

(2) To pay or make provision for the payment of all debts, obligations and liabilities of the cooperative according to their priorities.

(b) After the notice of intent to dissolve has been filed with the secretary of state, the board may sell, lease, transfer or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

(c) Tangible and intangible property, including money, remaining after the discharge of the debts, obligations and liabilities of the cooperative may be distributed to the members and former members as provided in the bylaws. If previously authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

43-38-144.

(a) Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary of state.

(b) The chair may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation.

The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

(c) Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state. After the notice is filed, the cooperative may resume business.

43-38-145. The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative or arbitration proceedings concerning the claim by two (2) years after the date the notice of intent to dissolve is filed with the secretary of state.

43-38-146.

(a) Articles of dissolution of a cooperative shall be filed with the secretary of state after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state:

(1) That all debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding;

(2) That the remaining property, assets, and claims of the cooperative have been distributed among the members or pursuant to a liquidation authorized by the members; and

(3) That legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order or decree that may be entered against the cooperative in a pending proceeding.

(b) The cooperative is dissolved when the articles of dissolution have been filed with the secretary of state.

(c) The secretary of state shall issue to the dissolved cooperative or its legal representative a certificate of dissolution that contains:

- (1) The name of the dissolved cooperative;
- (2) The date the articles of dissolution were filed with the secretary of state; and
- (3) A statement that the cooperative is dissolved.

43-38-147. After a notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court .

43-38-148.

(a) A court may grant equitable relief that it deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business:

- (1) In a supervised voluntary dissolution that is applied for by the cooperative;
- (2) In an action by a member when it is established that:
 - (A) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock;
 - (B) The directors or those in control of the cooperative have acted fraudulently, illegally or in a manner unfairly prejudicial toward one (1) or more members in their capacities as members, directors or officers;
 - (C) The members of the cooperative are so divided in voting power that, for a period that includes the time when two (2) consecutive

regular members' meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(D) The cooperative assets are being misapplied or wasted; or

(E) The period of duration as provided in the articles has expired and has not been extended as provided in this article.

(3) In an action by a creditor when:

(A) The claim of the creditor against the cooperative has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

(B) The cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business; or

(4) In an action by the attorney general to dissolve the cooperative in accordance with this article when it is established that a decree of dissolution is appropriate.

(b) In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative but may not refuse to order equitable relief or dissolution solely on the ground that the cooperative has accumulated operating net income or current operating net income.

(c) In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one (1) or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subitems (a)(2)(B) or (C) of this section. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

(d) If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

(e) Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

(f) It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

43-38-149.

(a) In dissolution proceedings before a hearing can be completed the court may:

(1) Issue injunctions;

(2) Appoint receivers with all powers and duties that the court directs;

(3) Take actions required to preserve the cooperative's assets wherever located; and

(4) Carry on the business of the cooperative.

(b) After a hearing is completed, on notice the court directs to be given to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

(c) The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

(1) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

(2) Debts, taxes and assessments due the United States, this state and other states in that order;

(3) Claims duly proved and allowed to employees under the provisions of the workers' Compensation Act except that claims under this clause may not be allowed if the cooperative has carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(4) Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three (3) months preceding the appointment of the receiver, if any; and

(5) Other claims proved and allowed.

(d) After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed pursuant to an approved liquidation plan.

43-38-150.

(a) A receiver shall be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

(b) A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.

43-38-151.

(a) A cooperative may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general if it is established that:

(1) The articles and certificate of organization were procured through fraud;

(2) The cooperative was organized for a purpose not permitted by this chapter or prohibited by state law;

(3) The cooperative has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once or has violated more than one (1) provision of this chapter; or

(4) The cooperative has acted, or failed to act, in a manner that constitutes surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

(b) An action may not be commenced under subsection (a) of this section until thirty (30) days after notice to the cooperative by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the cooperative has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the cooperative thirty (30) additional days to make the correction before filing the action.

43-38-152.

(a) In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

(b) If the court requires the filing of claims, the court shall:

(1) Set a date, by order, at least one hundred twenty (120) days after the date the order is filed, as the last day for the filing of claims; and

(2) Prescribe the notice of the fixed date that shall be given to creditors and claimants.

(c) Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of

court, from claiming an interest in or receiving payment out of the property or assets of the cooperative.

43-38-153. The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets.

43-38-154.

(a) In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations and liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities, the court shall enter an order dissolving the cooperative.

(b) When the order dissolving the cooperative or association has been entered, the cooperative or association is dissolved.

43-38-155. After the court enters an order dissolving a cooperative, the court administrator shall cause a certified copy of the dissolution order to be filed with the secretary of state. The secretary of state may not charge a fee for filing the dissolution order.

43-38-156.

(a) A person who is or becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings and all those claiming through or

under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

(b) Within one (1) year after articles of dissolution have been filed with the secretary of state pursuant to this article or a dissolution order has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(1) Against the cooperative to the extent of undistributed assets; or

(2) If the undistributed assets are not sufficient to satisfy the claim, the claim may be allowed against a member to the extent of the distributions to members in dissolution received by the member.

(c) Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the officers, directors or members of the cooperative before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

43-38-157. After a cooperative has been dissolved, any of its former officers, directors or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.